

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

DONALD M. LEE,)	
)	
Petitioner,)	4:16CV3058
)	
v.)	
)	
NEBRASKA DEPARTMENT OF)	MEMORANDUM AND ORDER
CORRECTIONS, ET AL.,)	
)	
Respondents.)	
_____)	

Lee has filed a petition for writ of habeas corpus.¹ However, it is too late as shown by the undisputed facts. (E.g., filing no. [12](#) at CM/ECF pp 1-2). Specifically, 568 days went by that counted against Lee before he filed this action. The Respondents have filed a motion for summary judgment, but Petitioner has not responded. Specifically, he has not shown any reason to excuse his tardy filing and I cannot find any excuse independently.

I now deny the petition and dismiss the petition with prejudice pursuant to [28 U.S.C. § 2241\(d\)\(1\)\(A\)](#) as it is untimely. Additionally, a petitioner cannot appeal an adverse ruling on his petition for writ of habeas corpus under § 2254 unless he is granted a certificate of appealability. [28 U.S.C. § 2253\(c\)\(1\)](#); [28 U.S.C. § 2253\(c\)\(2\)](#); [Fed. R. App. P. 22\(b\)\(1\)](#). The standards for certificates (1) where the district court reaches the merits or (2) where the district court rules on procedural grounds are set for in [Slack v. McDaniel, 529 U.S. 473, 484-485 \(2000\)](#). I have applied the

¹Petitioner has styled his action as an “Application for Certificate of Appealability” to the Eighth Circuit Court of Appeals. However, it is clear that Petitioner intended to file a petition for writ of habeas corpus in this court and we have treated it as such.

appropriate standard and determined that Petitioner is not entitled to a certificate of appealability.

IT IS ORDERED that:

1. Respondent's Motion for Summary Judgment (filing no. [11](#)) is granted. The Petition (filing no. [1](#)) is denied and dismissed with prejudice.
2. The court will not issue a certificate of appealability in this matter.
3. The court will enter a separate judgment in accordance with this order.

DATED this 13th day of September, 2016.

BY THE COURT:

s/ Richard G. Kopf
Senior United States District Judge